

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	
EINAT et al	)	Examiner:
Appln. No.: 09/802,472	)	Washington, D.C.
Filed: March 9, 2001	)	June 26, 2001
For: SEQUENCES CHARACTERISTIC	)	Atty.Docket: EINAT=4.1C
OF HYPOXIA-REGULATED GENE	)	
TRANSCRIPTION	)	

RESPONSE TO NOTICE TO COMPLY WITH  
SEQUENCE LISTING REQUIREMENTS

Honorable Commissioner for Patents  
Washington, D.C. 20231

Sir:

In response to the Notice to Comply included in the Notice to File Missing Parts of Nonprovisional Application dated April 26, 2001, applicants submit the following statement:

Attached hereto is a 3 1/2" disk containing the "Sequence Listing" in computer readable form in accordance with 37 C.F.R. §1.821(e).

The following statement is provided to meet the requirements of 37 C.F.R. §1.821(f) and 1.821(g).

I hereby state, in accordance with 37 C.F.R. §1.821(f), that the content of the paper copy Sequence Listing of record and the computer readable copy of the sequence listing are believed to be the same.

I hereby also state, in accordance with 37 C.F.R. §1.821(g), that the submission is not believed to include new matter.

Under U.S. rules, each sequence must be classified in <213> as an "Artificial Sequence", a sequence of "Unknown" origin, or a sequence originating in a particular organism, identified by its scientific name.

Neither the rules nor the MPEP clarify the nature of the relationship which must exist between a listed sequence and an organism for that organism to be identified as the origin of the sequence under <213>.

Hence, counsel may choose to identify a listed sequence as associated with a particular organism even though that sequence does not occur in nature by itself in that organism (it may be, e.g., an epitopic fragment of a naturally occurring protein, or a cDNA of a naturally occurring mRNA, or even a substitution mutant of a naturally occurring sequence). Hence, the identification of an organism in <213> should not be construed as an admission that the sequence *per se* occurs in nature in said organism.

Similarly, designation of a sequence as "artificial" should not be construed as a representation that the sequence has no association with any organism. For example, a primer or probe may be designated as "artificial" even though it is necessarily complementary to some target sequence, which may occur in nature. Or an "artificial" sequence may be a substitution mutant of a natural sequence, or a chimera of two or more natural sequences, or a cDNA (i.e., intron-free

sequence) corresponding to an intron-containing gene, or otherwise a fragment of a natural sequence.

The Examiner should be able to judge the relationship of the enumerated sequences to natural sequences by giving full consideration to the specification, the art cited therein, any further art cited in an IDS, and the results of his or her sequence search against a database containing known natural sequences.

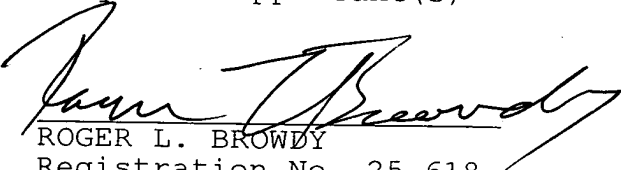
Applicants submit that the present application contains patentable subject matter and therefore urge the examiner to pass the case to issuance.

If the examiner has any questions or comments concerning the above described application, the examiner is urged to contact the undersigned at the phone number below.

Respectfully submitted,

BROWDY AND NEIMARK, P.L.L.C.  
Attorneys for Applicant(s)

By

  
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UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
09/802,472	03/09/2001	Paz Einat	EINAT4.1C

001444  
BROWDY AND NEIMARK, P.L.L.C.  
624 NINTH STREET, NW  
SUITE 300  
WASHINGTON, DC 20001-5303

CONFIRMATION NO. 7736

FORMALITIES LETTER



\*OC00000006012551\*

Date Mailed: 04/26/2001



NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

Filing Date Granted

An application number and filing date have been accorded to this application. The item(s) indicated below, however, are missing. Applicant is given **TWO MONTHS** from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The statutory basic filing fee is missing.  
*Applicant must submit \$ 710 to complete the basic filing fee and/or file a small entity statement claiming such status (37 CFR 1.27).*
- Total additional claim fee(s) for this application is \$160.  
    ■ \$160 for 2 independent claims over 3 .
- The oath or declaration is missing.  
*A properly signed oath or declaration in compliance with 37 CFR 1.63, identifying the application by the above Application Number and Filing Date, is required.*
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$130 for a non-small entity, must be submitted with the missing items identified in this letter.
- The balance due by applicant is \$ 1000.

The application is informal since it does not comply with the regulations for the reason(s) indicated below

The required item(s) identified below must be timely submitted to avoid abandonment:

- Substitute drawings in compliance with 37 CFR 1.84 because:
  - drawings submitted to the Office are not electronically reproducible. Drawing sheets must be submitted on paper which is flexible, strong, white, smooth, non-shiny, and durable (see 37 CFR 1.84(e));
- This application does not contain a statement that the content of the sequence listing information recorded in computer readable form is identical to the written (on paper or compact disc) sequence

06/20/2001 AZERGAH1 00000010 09802472

710.00 OP  
160.00 OP  
130.00 OP

01 FC:101  
02 FC:102  
03 FC:105

09/802,472 06/20/2001

listing and, where applicable, includes no new matter, as required by 37 CFR 1.821(e), 1.821(f), 1.821(g), 1.825(b), or 1.825(d). Applicant must provide such statement. If the effective filing date is on or after September 8, 2000, see the final rulemaking notice published in the Federal Register at 65 FR 54604 (September 8, 2000) and 1238 OG 145 (September 19, 2000).

- A copy of the "Sequence Listing" in computer readable form has not been submitted as required by 37 C.F.R. 1.821(e). If the effective filing date is on or after September 8, 2000, see the final rulemaking notice published in the Federal Register at 65 FR 54604 (September 8, 2000) and 1238 OG 145 (September 19, 2000). Applicant must provide an initial computer readable form (CRF) copy of the "Sequence Listing" and a statement that the content of the sequence listing information recorded in computer readable form is identical to the written (on paper or compact disc) sequence listing and, where applicable, includes no new matter, as required by 37 CFR 1.821(e), 1.821(f), 1.821(g), 1.825(b), or 1.825(d). If applicant desires the sequence listing in the instant application to be identical with that of another application on file in the U.S. Patent and Trademark Office, such request in accordance with 37 CFR 1.821(e) may be submitted in lieu of a new CRF.

For questions regarding compliance to these requirements, please contact:

- For Rules Interpretation, call (703) 308-4216
- To Purchase PatentIn Software, call (703) 306-2600
- For PatentIn Software Program Help, call (703) 306-4119 or e-mail at [patin21help@uspto.gov](mailto:patin21help@uspto.gov) or [patin3help@uspto.gov](mailto:patin3help@uspto.gov)

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*A copy of this notice **MUST** be returned with the reply.*

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Customer Service Center

Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE

T.03290" 2422860

In re Application of:

EINAT et al.

Serial No.: 09/802,472

IA Filing Date: March 9, 2001

For: SEQUENCE CHARACTERISTIC OF

Atty Docket: EINAT4

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

JUN 26 2001

Application Division

ATTN: BOX MISSING PARTS

Washington, D.C.

Confirmation No. 7736

LATE SUBMISSION OF FILING FEE AND/OR DECLARATION

HON. COMMISSIONER OF PATENTS

Washington, D.C. 20231

Sir:

The present communication is in response to the "NOTICE TO FILE MISSING PARTS OF APPLICATION..." dated April 26, 2001.

- [xx] Attached hereto is an executed oath or declaration in compliance with 37 C.F.R. 1.63, identifying the present application by title, serial number, filing date and priority information.
- [ ] Attached hereto is an executed oath or declaration in compliance with 37 C.F.R. 1.63, identifying the present application by title, serial number, filing date and priority information, and to which is attached a duplicate copy of the application as filed.
- [ ] Applicant claims small entity status. See 37 CFR 1.27.
- [xx] Formal drawings - Figures 1- , \_\_\_ sheets
- [ ] Preliminary Amendment.
- [ ] Preliminary Amendment and Statements in Support of Filing and Submissions in Accordance with 37 C.F.R. 1.821-1.825.
- [xx] ~~Sequence Listing (hardcopy)~~, and computer-readable form of Sequence Listing.
- [ ] A certified copy of priority document no. \_\_\_\_\_, filed \_\_\_\_\_, is also attached. Priority is claimed.
- [ ] An Information Disclosure Statement with 08A-1449 and \_\_\_ references is also attached.
- [ ] Change of Address

The following fee is calculated below:

	(Col. 1)	(Col. 2)		SMALL ENTITY			OTHER THAN SMALL ENTITY	
FOR:	NO. FILED	NO. EXTRA		RATE	FEE	OR	RATE	FEE
BASIC FEE					\$355.00	OR		\$710.00
TOTAL CLAIMS	12 -20			X 9 =	\$		X 18 =	\$
INDEP. CLAIMS	5 - 3	2		X 40 =	\$		X 80 =	\$160.00
[ ] MULTIPLE DEPENDENT CLAIMS PRESENTED				+ 135 =	\$		+ 270 =	\$
If the difference in Col. 1 is less than 0, enter "0" in Col. 2				TOTAL	\$		TOTAL	\$870.00

- [ ] Surcharge for late filing of English translation \$ 130.00
- [xx] Late filing of Declaration surcharge in the amount of:  
Small Entity [ ] \$65.00 Other than Small Entity [xx] \$130.00
- [ ] It is hereby petitioned for an extension of time in accordance with 37 C.F.R. 1.136(a). The appropriate fee required by 37 C.F.R. 1.17 is calculated as shown below:
- |                             |                             |
|-----------------------------|-----------------------------|
| Small Entity                | Other Than Small Entity     |
| Response Filed Within       | Response Filed Within       |
| [ ] First - \$ 55.00        | [ ] First - \$ 110.00       |
| [ ] Second - \$ 190.00      | [ ] Second - \$ 380.00      |
| [ ] Third - \$ 435.00       | [ ] Third - \$ 870.00       |
| [ ] Fourth - \$ 680.00      | [ ] Fourth - \$1,360.00     |
| Month After Time Period Set | Month After Time Period Set |
- [XX] Conditional Petition for Extension of Time:  
If any extension of time for a response is required, applicant requests that this be considered a petition therefor.
- [ ] Check No. \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ is enclosed to cover the above fees.
- [XX] Credit Card Payment Form, PTO-2038, authorizing payment in the amount of \$1,000.00 is enclosed to cover the fees.
- [XX] The Commissioner is hereby authorized and requested to charge any additional fees which may be required in connection with this application or credit any overpayment to Deposit Account No. 02-4035. This authorization and request is not limited to payment of all fees associated with this communication, including any Extension of Time fee, not covered by check or specific authorization, but is also intended to include all fees for the presentation of extra claims under 37 CFR 1.16 and all patent processing fees under 37 CFR 1.17 throughout the prosecution of the case. This blanket authorization does not include patent issue fees under 37 CFR 1.18.

BROWDY AND NEIMARK, P.L.L.C.  
Attorneys for Applicant(s)

By:

Roger L. Browdy

Registration No. 25,618

RLB:edg

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